



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 6, 2011

CBCA 1854-TRAV, 1869-TRAV

In the Matter of ROBERT GAMBLE

Robert Gamble, Hofenfels, Germany, Claimant.

Randy Spiker and Orbetta Hoffman, Travel Pay Operations, Defense Finance and Accounting Service, Columbus, OH, appearing for Department of the Army.

SOMERS, Board Judge.

Claimant, Robert Gamble, a teacher with the Department of Defense Education Activity (DoDEA), completed a period of service in Europe and signed a renewal agreement for another period of service. As a result, DoD authorized Mr. Gamble and his dependents to travel to Oregon, Mr. Gamble's home of record in the United States. Rules governing renewal agreement travel enable an employee who has been transferred overseas to return to his or her place of actual residence in the United States and take leave in between tours of duty overseas, with the agency reimbursing the travel and transportation expenses of the trip.

According to his travel authorization, Mr. Gamble could mail unaccompanied baggage to the United States. Mr. Gamble shipped baggage through the United States Postal Service, incurring a cost of \$135.60. The agency reimbursed him in the amount of \$71.15. In addition, the agency paid Mr. Gamble \$58.50 for per diem expenses. Mr. Gamble seeks additional reimbursement for his expenses incurred in shipping his unaccompanied baggage (CBCA 1854-TRAV) and for additional per diem (CBCA 1869-TRAV). We consolidated the cases by order dated February 2, 2010.

Discussion

In one of several agency responses to Mr. Gamble's claims, the agency mentioned the existence of an agreement with the teachers' union. In light of that response, the Board queried the parties concerning whether a collective bargaining agreement existed that might impact this claim. Both parties referred the Board to a web citation to the applicable collective bargaining agreement, although Mr. Gamble specifically noted that he is not a member of the union and questioned the relevance of the existence of the agreement to this dispute. Neither party expressly raised the issue of jurisdiction. Nonetheless, in light of the existence of the collective bargaining agreement, we examine our jurisdiction *sua sponte*. We conclude a collective bargaining agreement between the Department of Defense Dependents Schools (DoDDS) and the Overseas Education Association (OEA) governs this dispute and provides the exclusive procedure for resolving Mr. Gamble's claims.¹

The Civil Service Reform Act (CSRA) provides that, generally, collective bargaining agreements between unions and agency management are to provide procedures for the settlement of grievances, and, with limited exceptions, the procedures set forth in such agreements shall be the exclusive administrative procedures for resolving grievances which fall within their coverage. 5 U.S.C. § 7121(a)(1) (2006); *see Daniel T. Garcia*, CBCA 2007-RELO, 10-2 BCA ¶ 34,468; *Rafal Filipczyk*, CBCA 1122-TRAV, 08-2 BCA ¶ 33,886. The Court of Appeals for the Federal Circuit has consistently held that this law means if a matter is arguably entrusted to a grievance procedure, no review outside that procedure may take place unless the parties to the agreement have explicitly and unambiguously excluded that matter from the procedure. *See Dunkleberger v. Merit Systems Protection Board*, 130 F.3d 1476 (Fed. Cir. 1997); *Muniz v. United States*, 972 F.2d 1304 (Fed. Cir. 1992); *Carter v. Gibbs*, 909 F.2d 1452 (Fed. Cir. 1990) (en banc)). Decisions by this Board and its predecessor in settling claims by federal civilian employees for travel and relocation expenses, the General Services Board of Contract Appeals, have consistently applied the statute, as interpreted by the Court of Appeals, to dismiss claims whose resolution is governed by provisions of collective bargaining agreements. *See Garcia*; *Margaret M. Lally*, CBCA 791-TRAV, 07-2 BCA ¶ 33,713; *James E. Vinson*, CBCA 501-TRAV, 07-1 BCA ¶ 33,502; *Rebecca L. Moorman*, GSBCA 15813-TRAV, 02-2 BCA ¶ 31,893; *Bernadette Hastak*, GSBCA 13938-TRAV, et al., 97-2 BCA ¶ 29,091.

¹ While Mr. Gamble may not be a paying member of OEA, the terms of the collective bargaining agreement are clear that the OEA is the bargaining agent for him, as his position is one for which the OEA serves as the bargaining agent. *See, e.g., Thomas F. Cadwallader*, CBCA 1442-RELO, 09-1 BCA ¶ 34,077.

The collective bargaining agreement in effect when Mr. Gamble mailed his unaccompanied baggage, and when he filed his case with the Board, provided that its grievance procedure “shall be the exclusive procedure for resolving grievances which fall within its coverage.” The collective bargaining agreement and the CSRA contain the same definition of grievance. A grievance includes any complaint concerning any matter relating to the employment of an employee or concerning any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment. 5 U.S.C. § 7103(a)(9). Conditions of employment include personnel policies, practices, and matters affecting working conditions, unless the policies, practices, and matters relate to prohibited political activities, or the classification of a position, or are otherwise specifically provided for by federal statute. 5 U.S.C. § 7103(a)(14). The collective bargaining agreement contains a provision which specifically excludes various matters from the agreement’s grievance procedures, but not allegations of misapplication of travel or relocation regulations.

The disputes between Mr. Gamble and the agency concerning the amount of reimbursement Mr. Gamble should receive for shipping excess baggage and for per diem are grievances that can be resolved by the collective bargaining agreement’s procedures because the disputes concern claimed misinterpretations or misapplications of rules affecting conditions of employment. We therefore may not consider Mr. Gamble’s complaint. *See, e.g., William Carr*, CBCA 1613-RELO, 09-2 BCA ¶ 34,252; *Michael F. McGowan*, CBCA 1290-RELO, 09-1 BCA ¶ 34,056. Mr. Gamble may only use the agreement’s procedures, not the Board’s, for resolving his claim.

JERI KAYLENE SOMERS
Board Judge